IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.94 of 2006
Date of decision:22.12.2006

Commissioner of Income tax-III, Ludhiana

....Appellant

versus

M/s. Malwa Cotton Spinning Mills Limited, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.
Mr. Sandeep Goyal, Advocate, for the respondent.

JUDGMENT:

This appeal has been preferred by the revenue against the order dated 18.7.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh in ITA No.563/Chandi/2004, for the assessment year 1994-95, proposing following substantial question of law:-

> "Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in holding that for the purposes of deduction under section 80HHC, gross amount of interest has to be deducted while excluding 90% of interest income earned by the assessee except interest received from customers on account of late payment, which is to be considered as business income?"

With the consent of learned counsel for the parties, we have taken the appeal for final disposal for determination of above referred substantial question of law.

The Assessing Officer held that Income of interest received by the assessee from customers was liable to be reduced from income for

calculating relief under section 80HHC of the Income Tax Act, 1961 (for short, 'the Act'). Stand of the assessee was that only 90% of the net amount of interest could be reduced from the profits eligible for calculating relief under section 80HHC of the Act. This plea was rejected and 90% of gross interest received by the assessee from its customers was reduced from the profits eligible for deduction under section 80HHC of the Act. This view was upheld by the CIT(A).

The Tribunal accepted the plea of the assessee, following judgment of the Hon'ble Supreme Court in **CIT v. Govinda Choudhury and Sons**, (1993) 203 ITR 881, holding that interest received from the customers was income from business and not from other sources.

Relevant provisions of Section 80 HHC of the Act read as follows:

> "80HHC. Deduction in respect of profits retained for export business.- (1) Where an assessee, being an Indian company or a person (other than a company) resident in India is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the profits derived by the assessee from the export of such goods or merchandise...
>
> (3) For the purpose of sub-section (1),-
>
> (a) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;
>
> (b) xx xx xx xx xx
>
> (c) where the export out of India is of goods or merchandise manufactured or processed by the assessee and of trading goods, the profits derived from such export shall,-

(i) in respect of the goods or merchandise manufactured or processed by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee; and

(ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods:

Provided that the profits computed under clause (a) or clause (b) or clause (c) of this sub-section shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiia) (not being profits on sale of a licence acquired from any other person), and clauses (iiib) and (iiic) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

Explanation.- .....

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(b) "export turnover" means the sale proceeds received in, or brought into India by the assessee in convertible foreign exchange in accordance with clause (a) of sub-section (2) of any goods or merchandise to which this section applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962);

(ba) "total turnover' shall not include freight

> or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962):
>
> Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression "total turnover" shall have effect as if it also excluded any sum referred to in clause (iiia), (iiib) and (iiic) of section 28;
>
> (baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by -
>
> (1) ninety per cent of any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and
>
> (2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;"

Reference to the above provisions shows that the assessee is entitled to deduction to the extent of profits derived from export. Explanation (baa) appended to Clause 4 of Section 80HHC of the Act defines the term "profits of the business" as profits and gains of business or profession reduced, inter-alia, by 90% of sum referred to in Clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of Section 28 of the Act or receipts of brokerage, commission, interest, rent charges or any other receipt of similar nature included in such profits.

Clause (baa), as referred to above, talks of procedures, as to how profits of business are to be computed. It provides that in case, incomes of the kind including interest are included in the profits of business, 90% thereof shall be reduced therefrom. It does not make any distinction between the interest earned from source 'A' or source 'B'. Interest from wherever it is earned retains the character of interest. Be it an interest from the customer on delayed payment of dues. It is not in dispute in the present case that interest income from the customer on delayed payment of dues is included in the business income and assessed as such.

What has been held in **Govinda Choudhary's** case (supra) is that in the case of a contractor, interest received on delayed payment is a business income and not income from other sources. Same view was taken by Hon'ble the Supreme Court in **CIT v. B.N.Agarwala & Co.,** (2003) 259 ITR 754. In the present case also, interest received by the assessee on delayed payment by the customer has been assessed as business income. It is at the time of determination of profits of business for the purpose of clause (baa) as referred to above, that the interest component added therein is to be excluded to give effect to the provisions in its true letter and spirit.

Accordingly, the substantial question of law referred to above is answered in favour of the revenue and against the assessee and it is held that even the interest which is received from the customer on account of delay in payment, even if assessed as business income but will have to be reduced therefrom for the purpose of calculation of profits of business to calculate the relief admissible under section 80 HHC of the Act.

The appeal is accepted.

(Adarsh Kumar Goel)
Judge

December 22, 2006
'gs'

(Rajesh Bindal)
Judge